IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 03.12.2007

Coram:-

The Hon'ble Mr. Justice P.D.DINAKARAN
and
The Hon'ble Mr. Justice R.REGUPATHI

H.C.P.No.1214 of 2007

Durai ... Petitioner

Vs.

1. The Secretary to the Government,
Prohibition and Excise Dept.,
Secretariat, Chennai 600 009.

2. The Commissioner of Police,
Greater Chennai. ... Respondents

Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus as stated therein.

For Petitioner : Mr.V.Parthiban
For Respondents: Mr.N.R.Elango
Addl. Public Prosecutor

O R D E R

(Delivered by R.REGUPATHI, J.)

The petitioner, who was incarcerated by order dated 02.07.2007 of the second respondent under the provisions of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) branding him as a Bootlegger, and confined at Central Prison, Chennai, seeks for the issuance of a writ of Habeas Corpus to call for the records in connection with the said order of detention in Memo No.279/BDFGISSV/2007, to set aside the same and to direct the respondents to produce him before this Court and set him at liberty.

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2. On the basis of a complaint given by one Thiyagarajan on 23.02.2006, stating that he purchased 78 cents of land at Injambakkam in the name of his wife Meenakshi and that the detenu herein and others, impersonating the wife of the complainant, created forged power of attorney in the name of one Muthukrishnan as if it was executed by the real owner of the property with an intention to grab the said land, a case came to be registered by the Sub Inspector of Police, St. Thomas Mount, Central Crime Branch, Chennai, in Cr. No.27 of 2006 for offences punishable under Sections 419, 466, 468 read with 471 and 420 IPC. read with 120(B) IPC. as against the detenu and others, subsequent to which, the detenu was arrested on 04.03.2006. The detenu is alleged to have cheated a number of persons and grabbed their lands by creating forged documents and, under the guise of offering construction work, he collected huge money to the tune of Rs.2 crores. The Detaining Authority, taking note of the gravity of the offence perpetrated in an organised and systematic manner and the effect of the same on the society at large, concluded that he acted in a manner prejudicial to the maintenance of public order and detained him as a 'slum grabber'.

3. Learned counsel for the petitioner challenges the order of detention on the sole ground that though the detenu was arrested as early as on 04.03.2006, the order of detention was passed much belatedly on 02.07.2007; thus, there was huge delay in passing the order of detention, which would go to the root of the detention order.

4. Admittedly, the detenu was arrested on 04.03.2006 in connection with the offence. However, the order of detention was passed only on 02.7.2007. Concededly, there is a delay of about fifteen months in passing the order of detention.

5. It is settled law that when there is undue and long delay between the prejudicial activities and the passing of detention order, the Court has to scrutinise whether the detaining authority has satisfactorily examined such delay and afforded a tenable and reasonable explanation as to why such delay has occasioned, when called upon to answer and further the Court has to investigate whether the casual connection has been broken in the circumstances of each case. Moreover, when such delay is unsatisfactory and unexplained, the same would throw considerable doubt on the genuineness of the subjective satisfaction of the detaining authority leading to a legitimate inference that the detaining authority was not really and genuinely satisfied as regards the necessity for detaining the detenu with a view to prevent him from acting in a prejudicial manner.

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6. In the instant case, the delay of about fifteen months in passing the order of detention has not been explained satisfactorily. Hence, we are of the considered opinion that the said delay vitiates the impugned order of detention.

7. Accordingly, the order of detention is quashed. The habeas corpus petition is allowed. The detenu is directed to be released forthwith, unless he is required in connection with any other case.

JI.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

To

1. The Secretary to the Government, Prohibition and Excise Dept., Secretariat, Chennai 600 009.
2. The Commissioner of Police, Greater Chennai.
3. The Superintendent, Central Prison, Chennai.
4. The Public Prosecutor, High Court, Madras.
5. The Joint Secretary to Government,
Public (Law and Order),
Fort St. George, Chennai-9.

Scd(co)

dv/13.12.

HCP No.1214 of 2007.

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